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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 29 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. At the time he filed the petition on his own behalf, the petitioner was a senior geologist for [redacted], [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and several witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies for the underlying immigrant classification. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

[1] The AAO notes that USCIS records show that [redacted] filed a Form I-140 petition on the alien's behalf on or about May 23, 2011. As of this writing, the petition is pending. According to the information available to the AAO, that employer seeks the same immigrant classification for the alien that he seeks for himself in the present proceeding, but the new petition evidently does not include an application for a national interest waiver.

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement, counsel stated:

> [The petitioner's] research and work is in the field of geology engineering, where he has excelled specifically in applications of petroleum reservoir characterization in mature production areas and complex regions. Reservoir characterization involves constructing a model that simulates the flow of fluids within the particular reservoir. . . .

> [The petitioner] is highly skilled in reservoir characterization due to his expertise in both geology and geophysics. This combination is rare among petroleum geologists, and [the petitioner's] specialized skills enable him to characterize oil and gas resources more effectively than other geologist engineers in the field. . . .
>
> [The petitioner's] affiliation with [redacted], one of the largest integrated oil and gas companies in the world, places him in a unique position to promote and implement new technologies and methods to revitalize mature wells and locate new sources of oil and gas. . . . His presence is vital to their well revitalization projects and exploration for new sources of hydrocarbons. . . .
>
> [The petitioner's] past experience and success serves as an inspiration to geologists and geophysicists who are involved in reservoir characterization and optimization. He is considered a pioneer of the development and application of 3D seismic structural and sequence stratigraphic modeling. Additionally, he is considered a pioneer in the integration of geoscience disciplines. . . .
>
> Based on his successes [redacted] requested [the petitioner's] presence in the U.S. to characterize reservoirs in complex U.S. sedimentary basins, a task only a top expert would be able to do. The fact that the company hand-selected [the petitioner] after an international search speaks to the level of his expertise and achievements. . . .
>
> Experts in the petroleum field confirm that the labor certification process would require an unworkable job description and the process would adversely affect the U.S. national interest.

(Citations omitted.) Background materials establish the intrinsic merit and national scope of the petitioner's work. The petitioner also submitted materials relating to professional conferences where he presented his work. These materials show that the petitioner is active in his field, but cannot intrinsically establish the significance of the petitioner's work relative to that of other qualified workers in the same field. To lend context to these materials, the petitioner submitted letters from five current or former co-workers.

[redacted], now a reservoir engineer manager at [redacted], Houston, Texas, stated:

> I have known [the petitioner] for almost 16 years in a professional capacity. We first met in [redacted] when we both were working in [redacted], the Venezuelan national oil company. . . .
>
> [The petitioner] proved to be an invaluable asset for team performance. His skills in structural and stratigraphic modelling were the key factor in improving production in mature reservoirs . . . where he developed and applied a sequence stratigraphic concept to propose new infill drilling wells, which after drilled not only increased oil production

> but doubled reserves volumes. This increase in production was unprecedented in the Maracaibo region, and the stratigraphic models utilized by [the petitioner] are one of the key reasons the area continues to produce.
>
> [The petitioner] . . . proposed new wells in areas of the reservoir which we thought were already depleted, completely transforming the understanding of the Lake Maracaibo region. Thanks to these new wells the reservoir production was increased and new reserve volumes were added. These results were so significant that sequence stratigraphy was included as a mandatory discipline in all reservoir characterization studies in [redacted], the world's 2nd largest oil and gas company. . . . [The petitioner] was one of the pioneers in the integration of geosciences disciplines within [redacted] in Venezuela. . . .
>
> [The petitioner's] ability to integrate geological and geophysical data into the hydrocarbon reservoir exploitation process will definitely increase the chances of new discoveries and better mature field practices to diminish dependency on foreign oil and gas sources.

[redacted], who described himself as a "Senior Geophysical Advisor" but identified no current employer, worked with the petitioner at [redacted] beginning in 1986. [redacted] asserted that the petitioner "was a pioneer in applying the sequence stratigraphic technology in the Maracaibo Lake Basin, replacing an older approach that "often resulted in expensive drilling operations with only marginal results." [redacted] asserted that the petitioner's work "produced an incalculable economic impact in the Venezuelan oil reserves: thousands, if not millions of new oil barrels reserves were added to the portfolio of the Venezuelan oil industry." [redacted] claimed that "very few professionals used the sequence stratigraphy approach to characterize reservoirs" before the petitioner published a paper on the subject, but now, "in part as a result of the publication, the use of sequence stratigraphy techni[q]ues has become an industry standard."

[redacted], now a senior reservoir engineer at [redacted] stated:

> U.S. sedimentary basins are among the most complex in the word [*sic*] due to a mixing of tectonic regimens and very particular sedimentological environments. Only the highest level and most experienced geologists are able to delineate and efficiently characterize reservoirs in these basins. Consequently, [redacted] searched internationally for outstanding geologists who would be able to perform these duties. One of the few that met all requirements was [the petitioner].

The record contains no documentary evidence of [redacted] claimed international search for job candidates. [redacted] the only [redacted] employee to state how [redacted] came to find and employ the petitioner, previously worked with the petitioner at [redacted] beginning in 1998.

Another former [redacted] employee is [redacted], now technical manager at [redacted], who has "known [the petitioner] for 11 years." [redacted] states:

[The petitioner's] work has been acclaimed for its quality and discussion of the cutting edge technical innovations utilized for reservoir characterization. . . . [The petitioner] was part of a team of specialists that [redacted] selected for drafting a manual of the best practices to elaborate a [redacted] This model continues to be used as a guide within [redacted]

[The petitioner] led the initial effort of [redacted] activities in Trinidad and Tobago as a Lead Geologist. . . .

[B]y analyzing geological and geophysical data, he determined that different types of hydrocarbon deposits can be identified in the same sand package through well-log response and the use of seismic attributes. This response could cause different behavior on the fluid content because of lateral sedimentary changes. The team obtained a better reservoir characterization using sequence stratigraphy, balanced structural sections, seismic attributes and core, production and petrophysical data. This led to better reserve estimations and possible new prospective areas to locate oil and gas deposits. The final technical advice to the National Trinitarian Oil Company, based on [the petitioner's] assessment was to: drill three (3) new horizontal wells, drill three (3) highly Deviates wells and drill two (2) new side track opportunities. This has added almost 3000 barrels of oil per day to current field production. The outcome of this project opened the doors to [redacted] in Trinidad and Tobago by virtue of its technical quality in which [the petitioner] had an outstanding and decisive contribution. . . .

It is my opinion that [the petitioner's] expertise in reservoir characterization and seismic Interpretation will substantially benefit the oil and gas industry as a whole, but particularly in the U.S., due to its critical petroleum shortages. Oil production is declining in the U.S. and energy independence is an issue of national interest. Accordingly, it will substantially benefit the U.S. national interest to allow [the petitioner] to bypass the lengthy labor certification process, in order to immediate[ly] address energy shortages in the U.S. through his work as a petroleum geologist.

The only initial witness not identified as a current or former [redacted] employee is [redacted] a petroleum engineer with [redacted] Venezuela and, since 2005, a "Technical Manager in [redacted], a new joint venture between [redacted] and [redacted]" [redacted] "worked with [the petitioner during] two periods." Mr. [redacted] stated that the petitioner's "specialized education in seismic interpretation and his ability to integrate petrophysics, geophysics, sedimentology and reservoir engineering enable him to serve the national interest to a substantially greater degree than others with the same qualifications. . . . His career could be summarized as simply brilliant."

The petitioner did not submit first-hand documentary evidence to establish that his work has increased yields to a greater degree than the work of other qualified professionals in his field, or to show the extent to which the petitioner's efforts have influenced the broader field of petroleum engineering. Going on record without supporting documentary evidence is not sufficient for

purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On February 23, 2010, the director issued a request for evidence, stating that the petitioner had not shown that his work has "been responsible for any changes in the thinking or approach of similarly employed personnel in [the] field." The director acknowledged references to published work by the petitioner, but stated that the petitioner had not established the influence of those publications, for example through independent citation. The director also stated that letters from independent witnesses carried more weight than letters from the petitioner's own collaborators.

In response, the petitioner submitted a printout from Google Scholar (http://scholar.google.com), indicating that two of the petitioner's papers (one from 1995, one from 1998) had two citations each. The petitioner did not establish that four published citations over the course of 15 years demonstrate unusual influence in his field. The petitioner submitted copies of two articles, each citing two of the petitioner's papers, thus accounting for the four citations. The first author of both citing articles is [redacted] (sometimes listed as [redacted]). [redacted] was also the petitioner's co-author on one of the two cited papers. The petitioner did not establish any published independent citation of his work.

The petitioner also submitted an excerpt from a master's thesis from a student at Texas A&M University in 2002, which included a 2001 paper by the petitioner in its bibliography.

The petitioner submitted ten more witness letters. Despite the director's advice that independent witness letters have more value in establishing the breadth of the petitioner's influence, every new letter is from a witness who had worked with the petitioner either at [redacted] or at [redacted] Four of the letters are from witnesses who had previously supplied letters with the initial filing of the petition. [redacted] asserted that the petitioner's "skills enable him to create precise second-to-none reservoir models." He also stated: "Because of [the petitioner's] ability to integrate diverse geoscience disciplines in his reservoir characterizations, he has increased the efficiency of drilling operations."

[redacted] stated:

> It is extremely difficult to challenge and overturn decades worth of technical and scientific methodologies that are commonly accepted. Nonetheless, after [the petitioner's] adept implementation of sequence Stratigraphic technology in the area, geoscience professionals began to rely on [the petitioner's] findings and teaching by applying the technology in other areas of the [redacted]
>
> The impact of the sequence stratigraphic technology on the daily oil production was an outstanding increase, of up to 50%, in the [redacted] . . . Additionally, when working on other international projects in countries such as Argentina, Colombia, and Ecuador, I found that geologists were not only aware of [the petitioner's] approach

> on the [redacted] but also they were using the same technology in their oilfields.

[redacted] asserted that the petitioner's "ability to provide training and mentorship to geosciences professionals is well known and recognized internationally," and that the petitioner "has altered the way that Oil Companies operate in Venezuela, Mexico, and the USA [and] also in Trinidad and Tobago." The last two quoted letters illustrate a pattern in the record. The petitioner claims an international reputation and influence, but submits nothing to support this claim except for letters from witnesses who have worked with him for years, or at least worked for the same employer as him.

[redacted] stated that the petitioner "led the way to instilling new methodology in sequence stratigraphy," and that the petitioner's "publications . . . have been used as a reference in many reservoir characterization studies," but the record contains no examples. Once again, the letter provides an assertion of influence without actual evidence thereof.

Four of the six new witnesses worked with the petitioner when he was at [redacted] now director of reservoir solutions for [redacted], stated: "I met [the petitioner] in [redacted] in the year 2000 when I was the Latin America Director for [redacted] Over the next 5 years I would have contact with [the petitioner] 5 to 10 days per month. At the time I was supplying geophysical data for [redacted]." [redacted] stated that his collaborations with the petitioner on three projects "resulted in about 50,000 barrels per day of increased production."

Also at [redacted], as a senior geophysical specialist, is [redacted], who worked at [redacted] (a [redacted] subsidiary) at the same time as the petitioner. [redacted] stated that the petitioner's "ability to integrate various disciplines in his reservoir characterization studies makes [the petitioner] a valuable asset for projects in structurally complex basins." Mr. [redacted] stated:

> Because of his outstanding experience and skills in different geological disciplines, he was selected by the [redacted] as a part of a Team in charge of creating a Manual of Procedures in Production Geology which, includes all the activities than [sic] a Geologist has to carry out in order to create an accurate static model of a reservoir. This manual was incorporated into the [redacted] best practices and it is still in use.

[redacted] a consultant who recently retired from Louisiana State University, described his "professional interaction with [the petitioner] beginning in 1988," when he and the petitioner both worked for [redacted]. stated that the petitioner's publications "improv[ed] the economics of [redacted] petroleum reservoirs." [redacted] also stated:

> Based on his outstanding professional skills in both geology and geophysics . . . , [the petitioner] was selected from an elite group of senior geosciences personnel within [redacted] to put together the "Handbook for Geologic and Geophysical Integrated Static Models" that combined stratigraphic, structural, seismic and sedimentology studies. The standards developed under his leadership are currently used by geoscientists as

> guidelines for best practices in [redacted] at one time the second largest government-owned Oil Corporation in the world.

There are instructive similarities between the two letters quoted above. The wording is not identical, but the tone is very similar, with both witnesses asserting that corporate leadership selected the petitioner for a writing task based on his "outstanding . . . skills." Both letters, and others in the record, also show idiosyncrasies such as the arbitrary capitalization of words and phrases like "[redacted]" and "[redacted]" *These similarities suggest common origin of the two letters.*

[redacted], now a senior exploration geophysicist at [redacted] previously worked with the petitioner at [redacted] Regarding one project at [redacted] stated: "The integrated reservoir model allowed for the identification of additional prospective zones. 70% of the accumulated production of the field comes from four wells which are associated with the reservoir model (detailed sand map) developed by" the petitioner. [redacted] claims: "Much of [the petitioner's] work has been used as a reference by new petroleum geologists, as well as experienced ones."

The remaining two new witnesses work for [redacted] lead senior reservoir engineer, stated: "we used [the petitioner's] case studies as master examples for several Applied Technical Workshops" "in various programs sponsored by [redacted] claimed to have studied the petitioner's "publications in detail" while studying for his doctorate. [redacted] stated:

> As a result of his innovative contributions to the field of reservoir characterization, [the petitioner] became part of a distinguished elite at [redacted] where he is currently a Lead Geologist, serving as part of [redacted] dedicated to the development of Midland, Central basin Platform, and Delaware basins. [The petitioner's] preeminence in integrating geology and geophysics disciplines makes him one of few petroleum geologists qualified to conduct reservoir characterizations in these challenging and structurally complex areas.

[redacted], a senior reservoir engineer at [redacted] stated:

> I am only acquainted with [the petitioner] through his publications and through presentations and comments on his work within [redacted] While I do not know [the petitioner] personally, I am aware of his singular ability to precisely characterize oil and gas reservoirs. Through his publications, presentations, and tangible project results, [the petitioner] has clearly demonstrated preeminence in the areas of structural, stratigraphic, sedimentological and seismic interpretation, and in particular (and of keen interest to me) in reservoir characterization. . . .
>
> It is rare to find geologists capable of developing geological models that take into account the critical requirements and limitations of the Reservoir Engineer's tools without multiple model-build iterations and detailed feedback from the Reservoir Engineers.

Many witnesses provide technical details and figures without any objective means to compare the petitioner's accomplishments with those of others in his field. It would appear that improving the yield of an oil well is a basic rationale for employing a petroleum engineer, and therefore the petitioner's ability to do so is not self-evident proof of his superiority in his profession. The record lacks objective context for many of the witnesses' key assertions and claims. An example of this is the oft-repeated claim that the petitioner's publications are widely influential, despite the near-total lack of evidence that others unconnected to the petitioner have ever cited those publications.

Many witnesses also asserted that there is a significant shortage of qualified professionals in the petitioner's field. The assertion of a labor shortage should be tested through the labor certification process. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 220-221. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *Id.* at 215.

The director denied the petition on April 8, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the available evidence did not demonstrate the petitioner's impact or influence in his field.

On appeal, the petitioner submits letters from [redacted] and [redacted] confirming that the beneficiary made presentations at conferences sponsored by those organizations. The director, however, never questioned that the presentations took place. The letters do not indicate that the petitioner's presentations stood out among others at the same conferences, nor do the letters in any way hint at the international reputation to which several witnesses have referred.

The petitioner submits four more letters on appeal, three of which are from prior witnesses. The sole new witness is [redacted] assessor of the general management office of [redacted] affiliate. [redacted] states that the petitioner "was and continues to be widely known for his preeminence in geological and geophysical fields, particularly with regard to his expertise in integrated reservoir characterization." [redacted] states that the manual to which prior witnesses have referred "is a reference used regularly to improve the performance of [redacted] geoscience professionals, and [the petitioner's] contributions have been responsible for the successful training of countless geoscience professionals."

[redacted] states that "it is rare for individuals in industry to have a voluminous quantity of publications," and therefore "the number of citations to [the petitioner's] work in other publications is not necessarily probative of its importance." This may well be true (although the record contains no statistical evidence to support the claim), but if so, then the petitioner must provide alternative evidence that is as persuasive and objective as citations would be. Witnesses assert that the petitioner's published work is highly influential, and that many others rely on that work, but without some objective measure, these assertions are merely unsupported claims.

[redacted], in his third letter on the petitioner's behalf, states that the petitioner's "reservoir models were the key to the discovery of 559 new well locations, tremendously increasing [redacted] portfolio and U.S. gas reserves." These are still more unsupported assertions. If evidence exists to confirm this claim, the petitioner has not provided it.

In an appellate brief, counsel notes that the director quoted only four of the witness letters, and concludes that "only the four letters . . . were reviewed, and the remaining evidence was disregarded." The director did not state or imply that the quoted letters represented the totality of the evidence. The quotations amounted to a representative sampling rather than an attempt at a comprehensive catalog of the evidence of record.

Counsel protests that the director denied the petition despite "substantiating commentary regarding the pioneering nature of [the petitioner's] work and the fact that significant changes were made within [redacted] . . . and the Venezuelan oil and gas industry as a whole, based on [the petitioner's] work." Here, counsel confuses matters by referring to witness assertions as "fact," when in fact they are claims from witnesses selected by the petitioner. USCIS is under no obligation to regard witness claims as undisputed or proven facts.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters in the record represent the perspectives of the petitioner's co-workers and colleagues. The director specifically instructed the petitioner to submit more independent perspectives on his work, but the petitioner responded with still more letters from current or former [redacted]

The petitioner initially relied mostly on letters from colleagues and co-workers, and after the director specifically requested independent evidence, the petitioner responded with even more letters from colleagues and co-workers. Such statements cannot, by brute volume, compensate for the absence of the types of evidence that the director had requested. If the petitioner's methods are in use throughout the industry, as some witnesses have asserted, there ought to be some kind of evidence to that effect. If no such evidence exists, then it is not clear how the petitioner's witnesses can reliably know the extent of the petitioner's influence.

By way of example, [redacted] claims that the petitioner's "successful implementation of sequence stratigraphy techniques in the [redacted] . . . radically altered the way in which reservoir characterizations were conducted in Venezuela" (emphasis in original), yet this seismic shift in industry practice appears to have gone entirely unrecorded and unreported until the petitioner asked his former co-workers to write about it.

The director did not, and the AAO does not, make any finding that the witnesses' claims are false. Rather, the petitioner has not shown the witnesses claims to be true. This is not an accusation of falsity, but a procedural finding that the petitioner has not met his burden of proof. The petitioner cannot remedy this deficiency by submitting still more letters, although the petitioner has repeatedly chosen that route.

Counsel protests that the director relied on "criteria and requirements not based on relevant legal authority." The statute and regulations are virtually silent as to how a petitioner can establish eligibility for the waiver. The only precedent decision to deal directly with the waiver, *Matter of New York State Dept. of Transportation*, which calls for "a past history of demonstrable achievement with some degree of influence on the field as a whole. . . . In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest." *Id.* at 219 n.6. Other case law, such as *Matter of Caron International* (cited above), limits the evidentiary weight of witness letters with regard to factual claims for which objective evidence ought to exist. Nevertheless, the bulk of counsel's appellate brief consists of references to the witness letters, as though the letters themselves were presumptive proof of the claims therein.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States, or every alien of exceptional ability in the arts, sciences or business, should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.